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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte NICK FAITHORN

Appeal 2016-000891
Application 13/248,863¹
Technology Center 2600

Before JAMES R. HUGHES, CATHERINE SHIANG, and JOYCE CRAIG,
Administrative Patent Judges.

CRAIG, *Administrative Patent Judge.*

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–22. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm-in-part.

¹ According to Appellant, the real party in interest is Broadcom Corporation. App. Br. 2.

INVENTION

Appellant's application relates to single Near Field Communication ("NFC") device identity selection on a multiple-identity supported device. Abstract. Claim 1 is illustrative of the appealed subject matter and reads as follows:

1. A Near Field Communication (NFC) capable device, comprising:

a demodulator configured to extract a polling command from a polling signal received from a second NFC capable device, the polling command including a characteristic;

a memory configured to store a list of a plurality of NFC targets; and

a processor configured to search the list to select a corresponding NFC target, from among the plurality of NFC targets, that matches the characteristic included in the polling command.

REJECTIONS

Claims 1, 2, 12–18, and 20–22 stand rejected under 35 U.S.C.

§ 103(a) as unpatentable over the combination of Symons² (US 8,233,842 B2; issued July 31, 2012) and Buhot (US 2012/0309302 A1; published Dec. 6, 2012).

Claims 3–11 and 19 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Symons, Buhot, and Griffin et al. (US 8,233,841 B2; issued July 31, 2012) ("Griffin").

² In the Final Action, the Examiner refers to U.S. Patent No. 8,233,842 as "Simmons."

ANALYSIS

We have reviewed the Examiner's rejections in light of Appellant's contentions that the Examiner has erred. We disagree with Appellant's contentions. Except as noted below, we adopt as our own: (1) the findings and reasons set forth by the Examiner in the action from which this appeal is taken and (2) the reasons set forth by the Examiner in the Examiner's Answer in response to Appellant's Appeal Brief. We concur with the conclusions reached by the Examiner. We highlight the following additional points.

Rejection of Claims 1, 2, 13, 14, and 20 under 35 U.S.C. § 103(a)

In rejecting claim 1, the Examiner found that Symons teaches or suggests all of the recited limitations, except "a memory configured to store a list of a plurality of NFC targets" and "a processor configured to search the list to select a corresponding NFC target, from among the plurality of NFC targets, that matches the characteristic included in the polling command," for which the Examiner relied on Buhot. Final Act. 2–5.

Appellant contends the Examiner erred because the cited portions of Symons do not disclose the limitation "a polling command," as recited in claim 1. App. Br. 7. Appellant argues that the Examiner's finding with regard to this limitation amounts to "mere speculation without any support in Symons." *Id.*

Appellant's arguments do not persuade us the Examiner erred. The Examiner found in the Answer that Buhot teaches that a NFC communication section detects NFC target devices by activating a detection loop based on a scanning or polling mechanism. Ans. 9 (citing Buhot ¶¶ 36,

88). In the Reply Brief, Appellant does not address or persuasively rebut the Examiner's findings.

Appellant next contends neither Symons nor Buhot teaches or suggests a controller configured to “search the list in its memory for a match to the identifying type obtained from the polling command” or to “select the first NFC identity in the list that corresponds to the polling command,” as recited in claim 1. App. Br. 8. Appellant argues that Buhot discloses selecting an “application element” by a user before communicating with any other NFC devices or targets. *Id.* at 9 (citing Buhot ¶ 61).

We are not persuaded of error because Appellant has not fully addressed the Examiner's rejection. The Examiner explained the process by which an activated reader application element may communicate with one or more detected NFC target devices. Ans. 11 (citing Buhot Figs. 2, 3; ¶¶ 51–52, 55–57, 61–62, 64–65, 79, 82–84, 88). Although Appellant has addressed the Examiner's findings based on paragraphs 51–52 and 61–62 of Buhot, Appellant has not addressed or persuasively rebutted the Examiner's findings based on the other cited paragraphs. *See* Reply Br. 3–5. In short, Appellant's argument that “the user of Buhot selects the ‘application element’ before its detection loop is activated” (App. Br. 9 (emphasis omitted)) does not persuade us that Buhot in combination with Symons fails to teach or suggest the disputed limitations of claim 1. We agree with the Examiner that at least paragraphs 64 and 82–84 of Buhot teach or suggest storing a list of a plurality of NFC targets and searching the list to select an NFC target that matches a characteristic included in the polling command. *See* Ans. 11; Buhot ¶¶ 64, 81–84.

Appellant next contends the Examiner has not provided a sufficiently articulated reason explaining why a skilled artisan would combine the teachings of Symons and Buhot to arrive at the claimed invention. App. Br. 10. We are not persuaded by Appellant’s contention because the Examiner has provided “some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness,” specifically, “to provide a method for providing communication between a wireless communication device capable of providing a near field communication service and at least one near field communication target device.” Final Act. 5; *see KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 417–18 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

Accordingly, we sustain the 35 U.S.C. § 103(a) rejection of independent claim 1 as well as the 35 U.S.C. § 103(a) rejection of independent claim 14, which Appellant argues is patentable for similar reasons. App. Br. 12. We also sustain the Examiner’s rejection of dependent claims 2, 13, and 20, for which Appellant makes no additional arguments. *Id.*

Rejection of Claims 12, 15–17, 21, and 22 under 35 U.S.C. § 103(a)

Appellant contends the Examiner has not shown that the combination of Symons and Buhot teaches or suggests limitations recited in dependent claims 12, 15–17, 21, and 22. App. Br. 13.

Appellant first argues that the Examiner has not shown that Symons and Buhot teach or suggest the limitation “the characteristic [being] from among a plurality of characteristics” and the “processor [being] further configured to search the list to select the corresponding NFC target that

matches a second characteristic from among the plurality of characteristics,” recited in claim 12 and similarly recited in claims 21 and 22. *Id.*

We disagree. The Examiner found that the NFC device in Buhot “can search for the first identity in the list (compare with the register target listener) that contains all of the specified characteristics.” Ans. 12 (citing Buhot ¶¶ 83–84). Given this teaching, we are not persuaded that an artisan of ordinary skill would not have found it obvious to search the list to select the corresponding NFC target that matches a second characteristic from among the plurality of characteristics, as claims 12, 21, and 22 require. Thus, we sustain the 35 U.S.C. § 103(a) rejection of dependent claims 12, 21, and 22.

Appellant next argues that the Examiner has not shown that Symons and Buhot teach or suggest the limitation “the characteristic comprises: a format of the polling command,” recited in claim 16. App. Br. 13.

We are not persuaded. The Examiner found that the detected NFC target device identification information in Buhot may include: “application data, the RF type of the detected NFC target device which defines the RF modulation and are typically standardized (Type A, Type B, Type F: read as a pluralities of identities associated with the NFC device; paragraph 0063-0064).” Ans. 11. We note Appellant’s Specification describes that conventional polling procedure contemplates using a Type A standard, a Type B standard, and a Type F (FeliCa) standard. Spec. ¶ 24. Thus, we are not persuaded that an artisan of ordinary skill would not have found the additional limitation of claim 16 obvious. Accordingly, we sustain the 35 U.S.C. § 103(a) rejection of dependent claim 16.

We also sustain the 35 U.S.C. § 103(a) rejections of dependent claims 15 and 17, for which Appellant makes no separate substantive arguments. *See* App. Br. 13–14. The Examiner explained that the claims were grouped together because they are similar in scope and, therefore, have been addressed and rejected under a similar rationale. Ans. 13.

Rejection of Claims 3–8, 10, 11, and 19 under 35 U.S.C. § 103(a)

Appellant contends the Examiner has not provided a sufficiently articulated reason explaining why a skilled artisan would combine the teachings of Griffin with those of Symons and Buhot to arrive at the invention of claims 3–8, 10, 11, and 19. App. Br. 14. We are not persuaded by Appellant’s contention because the Examiner has provided “some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness,” specifically, “to provide a method for enabling a peer to peer financial transaction between mobile devices using near field communication in a network environment.” Final Act. 8; *see KSR*, 550 U.S. at 417–18.

Appellant further contends the Examiner has not shown that the combination of Symons, Buhot, and Griffin teaches or suggests the limitations in dependent claims 4–11 and 19. App. Br. 15.

Appellant first contends the Examiner has not shown that the combination of Symons, Buhot, and Griffin teaches or suggests the limitation “characteristic comprises: a format of the polling command,” recited in dependent claim 4. App. Br. 15. For the reasons discussed above

with regard to claim 16, we are not persuaded of Examiner error.

Accordingly, we sustain the 35 U.S.C. § 103(a) rejection of claim 4.

Appellant also contends the Examiner has not shown that *Symons and Buhot* teach or suggest the limitation “a financial restriction to prevent . . . based on a user-defined amount,” recited in claim 19. App. Br. 13. The Examiner, however, relied on *Griffin* as teaching the disputed limitation. Final Act. 8 (citing *Griffin* Figs. 5–6; col. 3:10–24; col. 5:37–59; col. 5:60–col. 6:18; col. 7: 23–53). Because Appellant has not persuasively rebutted the Examiner’s findings, we sustain the Examiner’s 35 U.S.C. § 103(a) rejection of claim 19.

We also sustain the 35 U.S.C. § 103(a) rejections of dependent claims 5–8, 10, and 11, for which Appellant makes no separate, substantive arguments. *See* App. Br. 13–14. The Examiner explained the claims were grouped together because they are similar in scope and, therefore, have been addressed and rejected under a similar rationale. Ans. 15.

Rejection of Claims 9 and 18 under 35 U.S.C. § 103(a)

Claim 18 depends from claim 14 and further recites the limitation “wherein the characteristic comprises: a restriction to prevent one of the plurality of NFC targets from being selected depending on a time of day or a Global Positioning System (GPS) location.” App. Br. 21. Appellant contends the Examiner has not shown that the combination of *Symons and Buhot* teaches or suggests the limitation recited in claim 18. App. Br. 13. Claim 9 depends from claim 1 and recites the same additional limitation as claim 18. *Id.* at 19.

We agree with Appellant that the Examiner has not cited sufficient support in the prior art references for the teaching of the limitation recited in

claims 9 and 18. In the Final Action, the Examiner addressed claim 18 with claims 14–17, but made no specific findings with regard to the disputed limitation. *See* Final Act. 5. Even after Appellant raised the issue on appeal, the Examiner failed specifically to address the disputed limitation in the Answer. *See* Ans. 13. Similarly, the Examiner did not specifically address the limitation recited in claim 9. *See* Final Act. 8.

For these reasons, on the record before us, we are persuaded the Examiner erred in rejecting claim 9 as obvious over the combination of Symons, Buhot, and Griffin, and in rejecting claim 18 as obvious over the combination of Symons and Buhot.

Accordingly, we reverse the 35 U.S.C. § 103(a) rejections of claim 9 and 18.

DECISION

We affirm the decision of the Examiner rejecting claims 1–8, 10–17, and 19–22.

We reverse the decision of the Examiner rejecting claims 9 and 18.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART